

Internal Revenue Service

Number: **201024027**

Release Date: 6/18/2010

Index Number: 1001.00-00, 2501.00-00,
2601.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-140635-09

Date:

March 08, 2010

Re:

LEGEND

Trust	=
Grandparent	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Grandchild 1	=
Grandchild 2	=
Grandchild 2's spouse	=
Family Member 1	=
Family Member 2	=
Original Trustee	=
Successor Trustee	=
Law firm	=
A	=
B	=
Corporate Trustee	=
Group	=

Charitable Subtrust	=
x	=
Great-grandchild 1 and spouse	=
Great-grandchild 2 and spouse	=
Great-grandchild 3 and spouse	=
Great-grandchild 4 and spouse	=
Great-grandchild 5	=
Great-great grandchild	=
Divided Trust 1	=
Divided Trust 2	=
Divided Trust 3	=
Divided Trust 4	=
Divided Trust 5	=
State	=
State Statute	=
Court	=
Primary Asset	=

Dear :

This responds to the September 4, 2009 letter from your authorized representative, requesting rulings on the income, gift, estate and generation-skipping transfer (GST) tax consequences of a proposed division of Trust.

The facts and representations are as follows. Grandparent irrevocably created Trust on Date 1, prior to September 25, 1985. It is represented that no additions, constructive or otherwise, have been made to Trust after September 25, 1985.

The Trust agreement includes the following provisions. Section 1.05(3) provides that the situs of Trust will be that state in which all the Trustees acting under the Trust agreement have their residence or, in the case of a corporate trustee, it has its principal place of business. If there are three or more trustees, then the state in which a majority of trustees have their residence or principal place of business will be the situs. The agreement was executed in State. Compliance with the requirements of execution is to be determined according to State law. The law of the state having situs of Trust from time to time will govern in all other respects.

Paragraph 3.02 provides that payment of any benefits, whether principal, income, or otherwise, shall be made in the sole discretion of the trustees. Amounts of net income, capital gains or other amounts of principal not paid to a beneficiary are to be accumulated and added to principal. Payments of income or principal determined by the trustees, if any,

except as made to potential charitable beneficiaries, shall be made only among the members of the lowest numbered class of individual beneficiaries (Individual Beneficiaries), as defined in Section 3.03(1), which at the time of payment has one or more living and otherwise eligible potential Individual Beneficiaries. The payments among the members of a class of Individual Beneficiaries need not be equal and may be made to none, to one, to all or to any number of members of the class in any proportions both as between Individual Beneficiaries and charitable beneficiaries, as the trustees determine, in their sole discretion.

Paragraph 3.03 provides that the beneficiaries potentially eligible for any payments of income, principal or otherwise shall include, at any time, one or more charitable beneficiaries as defined in Section 3.03(2) and one or more members of the class of Individual Beneficiaries then eligible under Section 3.03(1).

Section 3.03(1) defines the potential Individual Beneficiaries as:

- (i) Class One: The issue of Grandchild 1 then living, and all spouses of then living or deceased issue of Grandchild 1; or
- (ii) Class Two: The issue of Grandchild 2 then living, and all spouses of then living or deceased issue of Grandchild 2 and, while any of such issue or spouses is living, Grandchild 2, if living, and any spouse of Grandchild 2; or
- (iii) Class Three: The issue of the children of Family Member 1 and Family Member 2 who are then living, and all spouses of then living or deceased issue of the children of Family Member 1 and Family Member 2; or
- (iv) Class Four: The children of Family Member 1 and Family Member 2 who are then living, and all spouses of then living or deceased children of Family Member 1 and Family Member 2; or
- (v) Class Five: Family Member 1, if then living, any spouse of Family Member 1, Family Member 2, if then living, and any spouse of Family Member 2; or
- (vi) Class Six: Any spouse of Grandchild 2 and, with certain exceptions, the persons who would be the heirs-at-law of Grandchild 1, if Grandchild 1 were then deceased, who are then living.

Section 3.03(2) provides that the charitable beneficiaries shall be of a group as may be selected by the trustees, in their sole discretion, consisting of corporations, associations and institutions organized and operated exclusively for religious, charitable, literary, and educational purposes and described in § 501(c)(3) of the Internal Revenue Code.

Section 3.03(4) provides that the trustees may make a complete distribution of all Trust assets at any time. In the event final distribution is determined by the trustees or legally

required, distribution will be made by the trustees to any or all members of the class of Individual Beneficiaries and charitable beneficiaries then eligible under the provisions of Article 3, as determined by the trustees, in their sole discretion.

Paragraph 4.01 provides that Trust is intended to endure in perpetuity. Any assets governed by a rule of law of situs under which a perpetual duration would render Trust invalid are to be distributed on the last date on which the assets can validly remain in trust. If the governing rule depends on specified lives in being, the duration of Trust is to be measured by the lives of all persons described as potential Individual Beneficiaries in Classes One to Six as would be determined on the date of execution of Trust.

Paragraph 4.05 provides that all determinations to make, apply, withhold or accumulate any discretionary payments or distributions of income or principal shall be made only by the trustees then acting who are not "related or subordinate parties" as to Grandparent, Grandchild 1, or Grandchild 2, within the meaning of § 672(c), or who are not within the definition of Individual Beneficiaries and charitable beneficiaries eligible at the time of the determination.

Paragraph 5.01 provides that if Original Trustee ceases to serve as trustee, he shall be replaced by Successor Trustee. If Successor Trustee ceases to serve, he or his successor shall be replaced by the partner, associate, or member of Law Firm as designated by any two partners of Law Firm. The power of designation shall be exercised in such manner by Law Firm as often as there may be a vacancy in the trusteeship originally filled by Original Trustee and Successor Trustee so that, except as otherwise provided, there shall always be a partner, associate, or member of Law Firm serving with the remaining trustees or trustee.

Paragraph 5.01 provides that the following persons shall have the power to appoint one or more individual trustees, or a corporate trustee, or one or more individual trustees and a corporate trustee to act with the trustee or trustees then acting, and also the further power to determine that any partner, associate, or member of Law Firm shall never serve as trustee, thus completely nullifying the further service or succession by any member or appointee of Law Firm. These powers shall be exercised by such of the following as qualify at the time of exercise: (i) the individual trustee or trustees (as distinguished from any corporate trustee) who are acting at the time; or (ii) if there are then no such individual trustees, a majority of the potential Individual Beneficiaries who have attained age 35 and who are members of the lowest-numbered class which contains any such Individual Beneficiaries as defined in Section 3.03(1); or (iii) if there are then no such Individual Beneficiaries, a majority of the potential Individual Beneficiaries who have attained the age of majority and who are members of the lowest-numbered class which contains any such Individual Beneficiaries as defined in Section 3.03(1); or (iv) if there are then no such Individual Beneficiaries, a court of competent jurisdiction.

Paragraph 5.01 provides that the powers of appointment and determination that no representative of Law Firm shall serve shall not be exercised by Grandparent, Grandchild 1,

or Grandchild 2, or be exercised during the lifetime of any of them in such manner as to result either (i) in Grandparent, Grandchild 1, or Grandchild 2 becoming a trustee, or (ii) in a majority of the trustees being “related or subordinate parties,” within the meaning of § 672(c), as to Grandparent, Grandchild 1, or Grandchild 2.

Section 5.04(9) provides that the trustees may divide Trust, determining values and designating particular assets for beneficiaries, assign like or unlike properties to different beneficiaries or trusts, and make distribution and payments in cash or in kind or in both.

A and B are the present trustees of Trust. Corporate Trustee is a limited Trustee with no power to make discretionary distributions. The situs of Trust is State. Under the terms of Trust and the law of State, Trust is to continue until the earlier to occur of: (i) the trustees’ complete distribution of the Trust assets, or (ii) the death of the last survivor of the persons named in Group.

The trustees of Trust requested a private letter ruling regarding the creation and funding of a revocable charitable subtrust of Trust. The private letter ruling was issued on Date 2. On Date 3, pursuant to the letter ruling, the trustees created the revocable charitable subtrust (Charitable Subtrust).¹ Charitable Subtrust has not yet been funded. A and B are the trustees of Charitable Subtrust.

Currently, there are no living members of Class One; that is, there is no living issue or spouse of issue of Grandchild 1. Grandchild 1 is x years old and unmarried. It is unlikely that there will ever be any issue or spouse of issue of Grandchild 1. Therefore, at the

¹ The Charitable Subtrust agreement includes the following provisions:

Paragraphs 2.01 and 2.02: The trustee may amend the agreement, but it shall not be effective without the consent of the trustee of Trust. The trustee of Trust may at any time revoke Charitable Subtrust.

Paragraph 2.03: The trustee may not accept contributions from any person or entity other than the trustee of Trust.

Paragraph 3.01: Unless sooner terminated by a complete distribution of the assets, Charitable Subtrust will terminate on the date required for the termination of Trust, and the remaining Charitable Subtrust assets will be distributed to Trust, and added to and disposed of as part of the general Trust estate under the Trust agreement.

Paragraph 3.02: The payment or accumulation of any amount is vested in the sole discretion of the trustee. Payments determined by the trustee shall be made only to charitable beneficiaries.

Section 3.03(1): The potential charitable beneficiaries shall be such one or more of a group as may be selected by the trustee, in the trustee’s sole discretion, consisting only of corporations, associations, and institutions that are: (1) organized and operated exclusively for religious, charitable, literary or educational purposes, (2) described in §§ 170(c), 642(c) and 501(c)(3) and (3) exempt from taxation under § 501(a).

Paragraph 5.01: The individual trustee (as distinguished from a corporate trustee) of Trust shall have the power to appoint cotrustees or successor trustees of Charitable Subtrust. Any cotrustee or successor trustee may be removed by at any time by the trustee of Trust.

present time, income and principal of Trust may be distributed to the members of Class Two, the next lowest numbered of the classes of Individual Beneficiaries. In addition, income and principal may be distributed to the charitable beneficiaries.

The twelve living members of Class Two are (i) Grandchild 2's five adult children (Great-grandchild 1, Great-grandchild 2, Great-grandchild 3, Great-grandchild 4, and Great-grandchild 5), (ii) the spouses of four of them (Great-grandchild 1's spouse, Great-grandchild 2's spouse, Great-grandchild 3's spouse, and Great-grandchild 4's spouse), (iii) a child of one of them (Great-great Grandchild), (iv) Grandchild 2, and (v) Grandchild 2's spouse..

Proposed transaction

The trustees will divide the Trust assets and liabilities into five approximately equal shares (Divided Trusts). The distribution to the Divided Trusts will be on a pro rata basis to the extent practical. For instance, the trustees will divide the primary asset (Primary Asset) of Trust strictly pro rata. The division will be adjusted to account for modest prior distributions made to certain Individual Beneficiaries in Class Two.

The Divided Trusts will have the same dispositive, termination, allocation, and administrative provisions as Trust except that, under Section 3.03(1)(ii) of a respective Divided Trust, Class Two will be redefined to limit that class of Individual Beneficiaries to the family line (Family Line) of one of the children of Grandchild 2. A child's Family Line will include the child, the child's spouse, the child's issue, and the spouses of the issue of the child. In addition, Grandchild 2 (while any issue or spouse of issue of Grandchild 2 is living) and Grandchild 2's spouse will be members of Class Two of each Divided Trust. Accordingly, Trust will be divided into: (1) Divided Trust 1 for Great-grandchild 1's Family Line, (2) Divided Trust 2 for Great-grandchild 2's Family Line, (3) Divided Trust 3 for Great-grandchild 3's Family Line, (4) Divided Trust 4 for Great-grandchild 4's Family Line, and (5) Divided Trust 5 for Great-grandchild 5's Family Line.²

One or more revocable charitable subtrusts (Divided Charitable Subtrusts) will be created under the Divided Trusts. The Divided Charitable Subtrusts will have the same provisions as Charitable Subtrust except that the powers to amend, revoke, etc., a particular Divided Charitable Subtrust will be exercisable by the trustees of the Divided Trust to which it is associated.

² The Divided Trusts will provide that, if all the members of a child's Family Line are deceased, their Divided Trust will terminate. The assets and liabilities of that Divided Trust will be allocated among Grandchild 2's then living issue, per stirpes, and will be distributed to the respective Divided Trust held for that issue or to a separate trust having the same terms and trustee as the Divided Trust for that issue. In addition, there will be a fractional division of the Divided Trust assets if Grandchild 2 has a subsequent child. If the last surviving member of Class Two dies during the Trust term, the assets of the Divided Trusts will be administered for the benefit of the then living members of the next lowest numbered class of Individual Beneficiaries.

On Date 4, pursuant to the trustees' petition, Court issued an order authorizing the proposed division. The order is subject to receipt of a favorable private letter ruling from the Internal Revenue Service.

You have asked for the following rulings:

- (1) The Divided Trusts and Divided Charitable Subtrusts will be exempt from the GST tax.
- (2) The division will not cause Grandchild 2, Grandchild 2's spouse, Grandchild 2's children or any member of their respective Family Lines to be treated as having made a transfer subject to gift tax.
- (3) The division will not cause the assets of the Divided Trusts or Divided Charitable Subtrusts (upon creation) to be includible in the gross estate of Grandchild 2, Grandchild 2's spouse, Grandchild 2's children or any member of their respective Family Lines, for estate tax purposes.
- (4) The allocation of assets and liabilities of Trust to the Divided Trusts will not cause Trust, Grandchild 2, Grandchild 2's spouse, Grandchild 2's children or any member of their respective Family Lines to recognize any ordinary income or loss or capital gain or loss, for income tax purposes.
- (5) The adjusted basis of the assets received by the Divided Trusts and Divided Charitable Subtrusts (if any) will be the same as the respective adjusted basis of the assets held by Trust, for purposes of § 1015.
- (6) The holding periods of the assets received by the Divided Trusts and Divided Charitable Subtrusts (if any) will be the same as the holding periods of the assets in Trust, for purposes of § 1223(2).

Issue 1

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(iv) provides that, if an addition is made after September 25, 1985, to an irrevocable trust which is excluded from the application of Chapter 13 by reason of

§ 26.2601-1(b)(1), a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of Chapter 13.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) apply only to determine whether an exempt trust retains its exempt status for generation-skipping transfer

tax purposes. They do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust by judicial reformation or nonjudicial reformation that is valid under applicable state law will not cause an exempt trust to be subject to the provisions of Chapter 13, but only if: 1) the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and (2) the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax is divided into two trusts. Under the facts presented in the example, the division of the trust into eight trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interests prior to the division, and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

In this case, Trust was irrevocable on September 25, 1985, and it is represented that no additions have been made since September 25, 1985. Based on the facts presented and the representations made, the division, as described above, of Trust into the Divided Trusts and the creation of the Divided Charitable Subtrusts will not result in a shift of any beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the division. Further, the proposed division will not extend the time for the vesting of any beneficial interest in the new trusts beyond the period provided for under the original trust. Accordingly, the Divided Trusts and Divided Charitable Subtrusts (if any) will not be subject to the provisions of Chapter 13.

Issue 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual.

Section 2511 provides that the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

The division of Trust and creation of the Divided Charitable Subtrusts, as described above, will not result in any change in the beneficial interests of any of the beneficiaries. Accordingly, based on the facts submitted and representations made, the division will not cause Grandchild 2, Grandchild 2's spouse, any of Grandchild 2's children or any member of their respective Family Lines to be treated as having made a transfer subject to gift tax.

Issue 3

Section 2036 provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death: (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037 provides, generally, that the value of the gross estate shall include the value of property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) if: (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of the reversionary interest immediately before the decedent's death exceeds five percent of the value of the property.

Section 2038(a)(1) provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment

thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity) by the decedent alone or in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

Sections 2036 and 2037 provide for inclusion of property in a decedent's gross estate if the decedent gratuitously transferred the property during life and retained certain rights, powers, or interests with respect to the property. Under § 2038, the transferred property is includible in the decedent's gross estate if the decedent held certain rights or powers at death. Thus, the estate tax inclusion provisions of §§ 2036 through 2038 apply only in the case of property transferred by the decedent during life.

In this case, the division of Trust and creation of the Divided Charitable Subtrusts will not constitute a transfer of property, for purposes of §§ 2036 through 2038, by Grandchild 2, Grandchild 2's spouse, any child of Grandchild 2, or a member of a child's respective Family Line. The beneficiaries of the trusts will have the same interests after the division as they had prior to the division. We therefore conclude that the division of Trust into the Divided Trusts (and the creation of the Divided Charitable Subtrusts) will not cause the trust assets to be includible in the gross estate of Grandchild 2, Grandchild 2's spouse, a child of Grandchild 2, or a member of a child's Family Line under §§ 2036 through 2038.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1)(A) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides that a power in a decedent to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment.

Rev. Rul. 79-353, 1979-2 C.B. 325, held that the value of property transferred to a trust is

includible in the decedent-grantor's gross estate under §§ 2036(a)(2) and 2038(a)(1) if the grantor retains the power to remove the corporate trustee, without cause, and appoint another corporate trustee, and the trustee is endowed with broad discretionary powers. In Rev. Rul. 81-51, 1981-1 C.B. 458, the Service announced that Rev. Rul. 79-353 would be applied prospectively only. Specifically, Rev. Rul. 81-51 held that, if on or before October 28, 1979 (the date of publication of Rev. Rul. 79-353), a grantor transferred property to an irrevocable trust, and retained the power to remove, at will, and replace the corporate trustee with another corporate trustee, no estate tax consequences will result on account of the retained removal and replacement power.

The Service reconsidered the position on this issue in Rev. Rul. 95-58, 1995-2 C.B. 191. This ruling revoked Rev. Rul. 79-353 and Rev. Rul. 81-51 and holds that a decedent-settlor's reservation of an unqualified power to remove a trustee and appoint an individual or corporate successor trustee that is not related or subordinate to the decedent within the meaning of § 672(c), is not considered a reservation of the trustee's discretionary power of distribution over the property transferred by the decedent-settlor to the trust. Although Rev. Rul. 79-353 and Rev. Rul. 81-51 were revoked, a trust that was exempt from the application of Rev. Rul. 79-353 by reason of Rev. Rul. 81-51 does not lose this exemption even if the trust otherwise fails to meet the standard set forth in Rev. Rul. 95-58.

In this case, an Individual Beneficiary may become a trustee of a Divided Trust held for his or her Family Line. However, under Paragraph 4.05 of Trust, he or she may not participate in any trustee decisions regarding discretionary distributions or as to the assets making up a distributive share. Thus, the Individual Beneficiary would have no power to pay (directly or indirectly) trust principal or income to himself or herself. Consequently, an Individual Beneficiary will not be regarded as possessing a general power of appointment solely as a result of his or her serving as a trustee.

Further, there are circumstances, under Paragraph 5.01, in which an Individual Beneficiary may possess the power to remove, at will, and replace the trustees of the Divided Trust held for his or her Family Line. Although Paragraph 5.01 does not include the standards of Rev. Rul. 95-58 for exercising the replacement power, the exemption provided by Rev. Rul. 81-51 is applicable as Trust was created and funded before October 29, 1979. Therefore, an Individual Beneficiary will not be considered to have a general power of appointment, within the meaning of § 2041(a)(2), solely by reason of possessing a power to remove and replace the trustees.

Issue 4

Section 61(a) defines gross income as "all income from whatever source derived." Under § 61(a)(3), gross income includes "[g]ains derived from dealings in property."

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining

gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained.

Under § 1.1001-1(h)(1), the severance of a trust, occurring on or after August 2, 2007, is not an exchange of property for other property differing materially either in kind or in extent, if (i) an applicable state statute or the governing instrument authorizes or directs the trustee to sever the trust; and (ii) any non-pro rata funding of the separate trusts resulting from the severance, whether mandatory or in the discretion of the trustee, is authorized by an applicable state statute or the governing instrument.

In the present case, Trust will be severed into the Divided Trusts on a pro rata basis to the extent practical. The dispositive provisions of each Divided Trust are the same as those of Trust. The proposed severance of Trust is authorized by the Trust agreement. In addition, applicable State law permits severance transactions. Under the terms of Trust, the trustees are authorized to assign assets and liabilities on a non-pro rata as well as a pro rata basis in the event that they sever Trust.

The severance of a trust occurring on or after August 2, 2007, is not an exchange of property for other property differing materially in kind or in extent, if the severance satisfies the criteria set forth in § 1.1001-1(h)(1). The proposed severance of Trust satisfies those criteria. Accordingly, the severance of Trust, accompanied by the pro rata funding of the Divided Trusts resulting from the severance, does not constitute an exchange of property for other property differing materially in kind or in extent under §§ 61 and 1001.

Issue 5

Section 1015 provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized. The basis in the assets in the trusts will be determined under § 1015. In this case, the basis of each trust asset in the hands of the surviving trusts will be the same as the basis of each such asset in the dividing trust prior to the division.

Issue 6

Section 1223 provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which the property was held by any other person, if under Chapter 1 such property has, for the purposes of determining

gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person.

Assuming the assets transferred from the dividing trust to the surviving trusts will have the same basis before and after the division, we conclude that the holding periods for all the assets held by each of the surviving trusts will include the holding periods of the assets of Trust (the dividing trust) under § 1223.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Code are in effect during the period at issue. Except as specifically ruled upon above, we express no opinion as to the tax consequences of the transaction described above under the cited provisions of the Code or under any other provisions of the Code.

The rulings in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

James F. Hogan
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for § 6110